SELVAM HOLDINGS (MALAYSIA) SDN BHD

v.

GRANT KENYON & ECKHARDT SDN BHD; BSN COMMERCIAL BANK MALAYSIA BHD & ORS (INTERVENERS)

COURT OF APPEAL, KUALA LUMPUR
SITI NORMA YAAKOB JCA
DENIS ONG JCA
HAIDAR MOHD NOOR JCA
[CIVIL APPEAL NO: W-02-738-97]
10 MARCH 2000

CIVIL PROCEDURE: *Functus officio - Exceptions - Inherent jurisdiction to set aside final order - Whether jurisdiction unlimited - When court may exercise jurisdiction - Ex debito justitiae - Whether must appeal or file fresh action*

CIVIL PROCEDURE: *Judgments and orders - Perfected order - Whether can be set aside ex debito justitiae - Whether application may be made in the same proceedings - Whether must file fresh action - Whether court functus officio - Boundaries of court's inherent jurisdiction to set aside perfected order*

The issue in this appeal was whether a High Court is *functus officio* once an order is drawn up and perfected, *ie,* whether a challenge to the order should be made by way of an application in the same suit, or by filing a fresh action to set aside the order.

The respondent had obtained a winding-up order against the appellant in 1979, citing it as 'Selvam Holdings (M) Sdn Bhd' and not 'Selvam Holdings (Malaysia) Sdn Bhd'. It was not disputed that there was no entity by the former (incorrect) name registered with the registrar of companies. In 1992 the appellant filed an originating motion ('the motion') seeking, *inter alia*, to nullify the winding-up order, disputing that it was the company which had been wound up. Whilst the motion was still being heard, the appellant filed an originating summons ('the summons') seeking identical orders as in the motion.

The learned judge in the summons allowed the appellant's application and declared, *inter alia,* the winding-up order a nullity and that the appellant had not been wound-up ('the 1993 order'). The 1993 order was drawn up and perfected. Subsequently, three parties sought to intervene in the

summons proceedings to be added as defendants ('the interveners'). Meanwhile in 1994, another High Court judge heard the motion and held that Selvam Holdings (Malaysia) Sdn Bhd and Selvam Holdings (M) Sdn Bhd were one and the same company and that the winding-up order had been properly made. No appeal was made against this order.

In 1997, the High Court allowed the interveners' application in the summons proceedings and set aside the 1993 order. The appellant appealed, contending that the procedure taken by the interveners should not have been by way of an application in the same suit but by a fresh action, and that accordingly their application should fail.

Held:
Per Siti Norma Yaakob JCA

[1] The Federal Court in *Hock Hua Bank Bhd v. Sahari Murid* has laid down the principle that once an order of court has been drawn up and perfected and becomes a final order, it cannot be altered or set aside in the same action as the court is *functus officio.*

[2] That rule is however subject to certain established exceptions and the court also has the inherent power to amend or set aside a final order.

[3] The extent of the court's inherent jurisdiction was extended by the Federal Court in *Badiaddin Mohd Mahidin & Anor v. Arab-Malaysian Finance Bhd* to allow the court unlimited jurisdiction to set aside orders: (i) where the order contravenes a substantive statutory prohibition rendering it defective on grounds of illegality or lack of jurisdiction; and (ii) where in exceptional cases, the justice of the case requires the court to intervene and correct a serious defect in the order.

[4] Under the aforesaid circumstances, a court is seised of jurisdiction to set aside an earlier order *ex debito justitiae*, without a need to appeal or file a fresh suit. This can be done in the same proceedings and before the same judge or another judge of concurrent jurisdiction.

[5] The interveners had established their interests in the outcome of the summons, and as the 1993 order had been obtained in breach of their rights, it was a nullity and could be attacked *ex debito justitiae.*

[6] The conduct of the appellant and its solicitors was questionable, causing the anomaly of there being two existing and conflicting orders as to its legal status. Furthermore, the appellant had filed numerous proceedings contesting the winding-up order but had not appealed against it. Under these circumstances, the filing of a fresh action to set aside the 1993 order would be futile and counter-productive.

[7] The justice of the case therefore entitled the interveners to apply to set aside the 1993 order in the same proceedings, and the High Court was not *functus officio* but could hear and determine the application under its inherent jurisdiction.

[Appeal dismissed with costs awarded against the proprietor of the appellant personally.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Isu di dalam rayuan ini adalah samaada Mahkamah Tinggi adalah *"functus officio"* bila perintah telah dilakar dan disempurnakan, iaitu samada cabaran terhadap perintah tersebut harus dibuat melalui permohonan di dalam guaman yang sama, atau melalui tindakan yang baru untuk mengenepikan perintah tersebut.

Responden telah mendapatkan perintah penggulungan terhadap perayu pada tahun 1979, dengan merujuknya sebagai 'Selvam Holdings (M) Sdn Bhd'. Ia tidak dipertikaikan bahawa tiada entiti dengan nama seperti itu yang didaftarkan dengan Pendaftar Syarikat. Pada 1992, perayu memfailkan notis usul pemula ('notis usul tersebut') memohon, *inter alia*, untuk membatalkan perintah penggulungan, mempertikaikan ia adalah syarikat yang telah digulungkan. Semasa notis usul tersebut masih dalam status sambung bicara, perayu memfailkan saman pemula ('saman pemula tersebut') memohon perintah yang sama seperti dipohon di dalam notis usul tersebut.

Hakim Mahkamah Tinggi yang mendengar saman pemula tersebut membenarkan permohonan perayu dan mengistiharkan, *inter alia*, perintah penggulungan tersebut adalah dibatalkan dan perayu tidak digulungkan ('perintah tahun 1993'). Perintah tahun 1993 telah dilakarkan dan disempurnakan. Kemudian, tiga pihak memohon untuk mencelah di dalam prosiding saman pemula tersebut untuk dijadikan defendan-defendan ('pencelah-pencelah tersebut'.) Pada tahun 1994, Hakim Mahkamah Tinggi yang lain telah mendengar notis usul tersebut dan memutuskan bahawa Selvam Holdings (Malaysia) Sdn Bhd dan Selvam Holdings (M) Sdn Bhd adalah satu dan syarikat yang sama dan bahawa perintah penggulungan tersebut telah dibuat dengan teratur. Tiada rayuan dibuat terhadap perintah ini.

Pada tahun 1997, Mahkamah Tinggi telah membenarkan permohonan pencelah-pencelah tersebut di dalam tindakan saman pemula tersebut dan mengenepikan perintah tahun 1993. Perayu merayu, menyatakan bahawa prosedur yang digunakan oleh pencelah-pencelah tersebut tidak sepatutnya melalui permohonan dalam guaman yang sama tetapi seharusnya melalui tindakan yang baru, dan bahawa berdasarkan pada itu permohonan mereka harus gagal.

Diputuskan:
Oleh Siti Norma Yaakob HMR

[1] Mahkamah Persekutuan di dalam kes *Hock Hua Bank Bhd v. Sahari Murid* telah memutuskan prinsip bahawa jika perintah mahkamah telah dilakar dan disempurnakan dan ia mejadi perintah muktamad, ia tidak boleh diubah atau diketepikan di dalam tindakan yang sama atas sebab mahkamah tersebut adalah *functus officio.*

[2] Prinsip tersebut walaubagaimanapun tertakluk kepada beberapa pengecualian di mana mahkamah mempunyai kuasa sediaada untuk meminda atau mengenepikan perintah muktamad.

[3] Had kuasa sedia ada mahkamah telah dipanjangkan oleh Mahkamah Persekutuan di dalam kes *Badiaddin Mohd Mahidin & Anor v. Arab-Malaysian Finance Bhd* untuk membenarkan mahkamah bidangkuasa yang tidak terhad untuk mengenepikan perintah: (i) di mana perintah tersebut bercanggah dengan suatu larangan yang substantif di bawah sesuatu Akta menjadikannya cacat atas alasan ia menyalahi undang-undang atau tidak mempunyai bidangkuasa; dan (ii) di dalam kes luar biasa, keadilan di dalam kes tersebut memerlukan mahkamah untuk bercampur tangan dan memperbetulkan kecacatan yang serius di dalam perintah sebelum itu.

[4] Dalam keadaan seperti dinyatakan di atas, mahkamah mempunyai bidangkuasa untuk mengenepikan sesuatu perintah sebelum itu secara *ex debito justitiae,* tanpa perlu merayu atau memfailkan guaman baru. Ini boleh dilakukan dalam guaman yang sama dan di hadapan hakim yang sama atau yang berlainan yang mempunyai bidangkuasa bersama.

[5] Pencelah telah membuktikan kepentingan mereka melalui kesudahan saman pemula tersebut, dan oleh kerana perintah tahun 1993 telah diperolehi dengan memungkiri hak mereka, ia adalah terbatal dan boleh dicabar *ex debito justitiae.*

[6] Tindakan perayu dan peguamcaranya boleh dipersoalkan, dan telah mengakibatkan kejanggalan ujudnya dua perintah yang bercanggah. Lebih-lebih lagi perayu telah memfailkan banyak prosiding membantah perintah penggulungan tetapi tidak merayu terhadapnya. Di dalam keadaan ini, memfailkan tindakan yang baru untuk mengenepikan perintah tahun 1993 adalah sia-sia dan tidak produktif.

[7] Keadilan di dalam kes ini memberikan hak kepada pencelah-pencelah untuk memohon untuk mengenepikan perintah tahun 1993 dalam tindakan yang sama dan Mahkamah Tinggi tidak *functus officio* untuk mendengar dan memutuskan permohonan tersebut di bawah kuasanya sedia ada.

[Rayuan ditolak dengan kos terhadap tuanpunya perayu sendiri.]

Case(s) referred to:

Arab Malaysian Finance Bhd v. Badiaddin Mohd Mahidin & Anor [1997] 1 CLJ 1 ***(refd)***

Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75 ***(foll)***

Craig v. Kanssen [1943] 1 All ER 108 ***(refd)***

Eu Finance Bhd v. Lim Yoke Foo [1982] 2 MLJ 37 ***(foll)***

Hock Hua Bank Bhd v. Sahari Murid [1981] 1 MLJ 143 ***(refd)***

Muniandy Thamba Kaundan & Anor v. D&C Bank Bhd & Anor [1996] 2 CLJ 586 ***(refd)***

Selvam Holdings (Malaysia) Sdn Bhd v. Toby Lam as the Receiver and Manager and Liquidator of Selvam Holdings (M) Sdn Bhd & Anor [1994] 4 CLJ 899 ***(refd)***

Legislation referred to:

Companies Act 1965, s. 218

Contracts Act 1950, s. 66

Malay Reservations Enactment (Cap 142), ss. 8, 13

Rules of the High Court 1980, O. 20 r. 11

For the appellant - Malik Imtiaz Sarwar (K Periasamy & M Pala with him); M/s Periasamy & Co

For the respondent - Bala Kumar; M/s Azim Ong & Krishnan

For the 1st & 2nd interveners - PS Gill (HS Panu with him); M/s Gill & Tang

For the 3rd intervener - Philip Chai; M/s Soo Thien Ming & Nashrah

[Appeal from High Court, Kuala Lumpur; Originating Summons No: D1-24-56-1993]

Reported by Anne Khoo

JUDGMENT

Siti Norma Yaakob JCA:

This appeal has a chequered and troubled history. It started off, in relation to the instant appeal, with the appellant filing an originating summons against the respondent on 30 March 1993, seeking replies to three questions that they had posed to the High Court. The three questions relate to an order of court dated 19 November 1979, ("the winding up order") wherein on the petition of the respondent, a judgment creditor, in Companies Winding-Up No. 34 of 1979, Selvam Holdings (M) Sdn. Bhd. ("the

company") was ordered to be wound up and the official receiver appointed the Provisional Liquidator of the Company. At that point in time, the only entity registered with the registrar of companies was the appellant, Selvam Holdings (Malaysia) Sdn. Bhd. There was no entity known as Selvam Holdings (M) Sdn. Bhd., the company that was ordered to be wound-up. From our reading and understanding of the petition itself, it is very clear that the respondent intended to wind up the appellant but a non-existent entity that used the abbreviation (M) as part of its name was wound up instead.

To correct the misapprehension that the appellant and the company were one and the same, the appellant tiled Originating Motion D6-25-42-92 on 26 August 1992, against the receiver and manager as well as the liquidator of the company and the registrar of companies as respondents, seeking various orders, the principal one being that the winding up order was not binding or effective on them. On 24 October 1994, Abdul Aziz Mohamad, J, held that Selvam Holdings (Malaysia) Sdn. Bhd. and Selvam Holdings (M) Sdn. Bhd. were one and the same company and that the winding up order was properly made and the receiver and manager and liquidator were properly appointed. There was no appeal against this order and the judgment of the learned judge appears as *Selvam Holdings (Malaysia) Sdn. Bhd. v. Toby Lam as the Receiver and Manager and liquidator of Selvam Holdings (M) Sdn. Bhd. and Another* [1994] 4 CLJ 899.

Whilst the aforesaid originating motion was part heard and pending decision, the appellant filed the originating summons from which the instant appeal originate, thirteen years after the winding up order, seeking answers to three questions, which we consider to be identical to that raised in the originating motion. Those three questions are as follows.

(1) Whether the winding up order is a nullity.

(2) If question (1) is answered in the negative whether the winding up order binds the appellant.

(3) Even if the winding up order is not a nullity that it does not bind or affect the status of the appellant and that the appellant have not been wound-up.

Shaik Daud Ismail, J (as he then was) heard the originating summons two weeks after it was filed, and on 15 April 1993 allowed the appellant's application by declaring that the winding up order was a nullity, it did not affect the appellant and that the appellant had not been wound-up ("the 1993 order").

The 1993 order was drawn up and perfected in late April 1993, and it was after this date that the three interveners before us applied separately for leave to intervene in the originating summons, be added as defendants to the action and that the 1993 order be set aside. The second intervener, Esso Production Malaysia, Inc. filed their application to intervene first on 18 May 1993, followed by the third intervener, Pemegang Amanah Sekolah Rendah Cina Yu Hwa on 6 September 1993, and lastly by the first intervener, BSN Commercial Bank Malaysia Bhd. on 17 July 1995. On 7 November 1997, the High Court allowed the interveners' applications, gave them leave to intervene and set aside the 1993 order. It was to appeal against this order that the parties were before us.

For completeness, we consider that it is appropriate at this stage to state the interests of the three interveners and the reasons why they wish to be added as parties to the originating summons.

The first intervener formerly known as Bank Buruh (Malaysia) Bhd. are both secured and unsecured creditors. As secured creditors, they had, in May 1977, provided a guarantee to Arab Development Malaysian Bank Berhad ("AMDB") in respect of a loan granted by AMDB to the appellant. As consideration for the guarantee, the appellant charged a number of properties to the first intervener. Additionally the first intervener had been appointed a member of the Committee of Inspection after the winding up order was made as the appellant's assets were insufficient to pay the debt due to the first intervener. Despite being secured creditors, the first intervener had not been served with any papers in the proceedings leading to the issue of the 1993 order.

As for the second intervener, they fear that the appellant may use the 1993 order to issue a notice under s. 218 of the Companies Act 1965, to demand a sum of money allegedly due from the second intervener for arrears of rental in respect of the appellant's premises known as No. 9, Lorong Lee Hin Neo, Ukay Heights, Ampang. The second intervener contend that all rentals due to the appellant had been paid to the court appointed liquidator by virtue of the winding up order.

We consider that the second intervener's fear that a threatened winding up proceeding may well be on the appellant's agenda, is not without basis as they had been served with a similar notice in August 1992 in respect of the same alleged debt and as a result of which, they instituted proceedings in Originating Summons No. D4-22-1244-92 against the appellant seeking various declarations relating to the legal status of the appellant.

Lastly we have the third intervener who had been sued by the appellant in Shah Alam in Civil Suit No. 22-417-92 praying for a retransfer of a property which had been sold by the receiver and manager of the appellant to Yu Hwa Chinese Primary School, Kajang, pursuant to a debenture and charge executed by the company in favour of the first intervener. The appellant allege that the sale and transfer of the property by the receiver and manager to the third intervener was made without the authority of the appellant and that the company did not have the authority to charge the land to the first intervener. The interest claimed by the third intervener is that the prayers claimed in the Shah Alam civil suit is connected to the 1993 order.

Before us, the parties raised one issue, that being a jurisdictional one and it relates to whether the High Court was *functus officio* when it granted the interveners' applications. This issue, we were told, was never canvassed or argued before the High Court but the parties appear to be agreeable to have it determined for the first time before us.

The appellant concedes that the interveners may well have the right to intervene and set aside the 1993 order but they contend that the procedure for doing so is not by way of an application in the same suit before the High Court but by filing a fresh action to have the 1993 order set aside. This is so as the 1993 order had already been drawn up and perfected and relying on the decisions made by the Federal Court in *Hock Hua Bank Bhd v. Sahari bin Murid* [1981] 1 MLJ 143 and the more recent case of *Badiaddin bin Mohd. Mahidin & Anor. v. Arab Malaysian Finance Bhd.* [1998] 2 CLJ 75; [1998] 1 MLJ 393, they further contend that the High Court should have struck out the interveners' applications and directed them to file a fresh action. Likewise the interveners rely on the same case law to say that the orders to intervene had been correctly made in the same suit in which the order sought to be impeached had been entered.

The principles of law as enunciated by the Federal Court in *Hock Hua Bank's case (supra)* can be stated in the following manner.

Once an order of court has been drawn up and perfected and it becomes a final order, it cannot be altered, varied or set aside in the same action as the court has become *functus officio* and the court has no jurisdiction to entertain any application to alter, vary or set aside the final order. However like any other general principle, there are exceptions to it and in the following cases, the same court has the inherent power to entertain any application to amend or set aside a final order.

1. Under O. 20 r. 11 of the Rules of the High Court 1980, better known as the slip rule, insofar as it is necessary to correct errors in expressing the intention of the court.

2. The order relates to a judgment in default or made in the absence of a party at the trial or hearing.

Then in 1982, following *Eu Finance Bhd. v. Lim Yoke Foo* [1982] 2 MLJ 37, another category of cases was added to the aforesaid list. These cases refer to orders that have been obtained in breach of the rules of natural justice as such orders are nullities and they can be successfully attacked in collateral proceedings *ex debito justitiae*.

Despite the above restrictions, an aggrieved party can still impeach a regularly drawn up order but only in a fresh suit brought to attack the order on the grounds that such an order had been obtained by fraud or that fresh evidence, not available at the trial or hearing, had since surfaced that may affect the order. To this we like to add another situation where a regularly obtained order can be questioned ie, where the order had been entered by consent. Under those circumstances the aggrieved party may institute fresh proceedings to attack the consent order.

In all the instances that we have cited, the normal appeal procedure is dispensed with. See also *Muniandy a/l Thamba Kaundan & Anor. v. D & C Bank Bhd. & Anor*. [1996] 2 CLJ 586; [1996] 1 MLJ 374 and *Craig v. Kanssen* [1943] 1 All ER 108.

That was the situation until 1998 when *Badiaddin's* case, *(supra)* came to be decided. *Badiaddin's* case, we say, extended the scope and extent of the inherent and discretionary jurisdiction of a court with unlimited jurisdiction to set aside an earlier order in the following two circumstances:

(1) where the earlier order had contravened a substantive statutory prohibition so as render the earlier order defective on the ground of illegality or lack of jurisdiction and

(2) where in exceptional cases, the justice of the case requires the court to intervene and correct an earlier order that contains a serious defect and there is a need to have it set aside.

Under the aforesaid circumstances, a court is seised with the necessary jurisdiction to entertain an application to set aside the earlier order *ex debito justitiae*. Expressed in another way there is no need to adopt the appeal procedure nor to file a fresh suit to set aside the defective order. That can be done in the same proceedings where the impeached order was granted and before the same judge or another judge with concurrent jurisdiction.

The facts of *Badiaddin's* case were that the appellants were co-owners of a Malay holding under the Malay Reservations Enactment (FMS Cap. 142) (As applicable to the State of Negeri Sembilan). Such landed property suffers restrictions in their dealings in that:

(1) no charge can be created over it in favour of a non-Malay under s. 8 of the Enactment and

(2) under s. 13 of the Enactment, it cannot be attached in execution of a decree or order unless the order or decree was obtained in proceedings instituted before the commencement of the Enactment.

The appellants charged the land to the respondent as security for a loan granted by the respondent to one Ismail bin Omar, a business associate of the appellants. Ismail failed to service the loan and the respondent foreclosed the land and obtained an order to sell it from the Land Administrator.

As the third party charge had contravened s. 8 of the Enactment and at the material time the respondent were never specified a "Malay" under the Second Schedule to the Enactment, the appellants, as chargors, applied and obtained a declaration on 21 March 1988, that the charge and the order of sale made by the Land Administrator were null and void (the first order). The respondent did not appeal against this order.

Two years later, the respondent who, by then, had become unsecured creditors applied to invoke s. 66 of the Contracts Act 1950, before the same judge and they obtained an order on 8 October 1990 (the second order) to the effect that since the appellants had received an advantage or benefit from the respondent under the void loan agreement, they, the appellants were ordered to compensate the respondent and in order to do so, the land was also ordered to be sold by public auction or private treaty and the proceeds be utilised to settle the balance of the outstanding loan made to Ismail.

This forced the appellants to file an application in the same proceedings to have the second order set aside and this was allowed by Mohd. Noor Abdullah, J on 22 September 1995 (the third order). The matter did not end there but proceeded to this court which allowed the respondent's appeal on the ground that the High Court was *functus officio* as Mohd. Noor Abdullah, J had no jurisdiction to set aside the second order. See the judgment of this court in *Arab Malaysian Finance Bhd. v. Badiaddin bin Mohd. Mahidin & Anor.* [1997] 1 CLJ 1; [1996] 3 MLJ 621.

The appellants appealed and in allowing the appeal, the Federal Court held that this court had erred when it proceeded to consider the issue of *functus officio* only but declined to enter into the broader spectrum of the case, namely its merit and particularly the applicability of s. 66 of the Contracts Act 1950. In so reversing the decision of this court, the Federal Court had confirmed that the High Court in its inherent jurisdiction can set aside its own order *ex debito justitiae* made in breach of a written law and which it had decided without jurisdiction. "The ends of justice will not be met if such a power did not exist. And the procedural branch of the broad and flexible doctrine of estoppel known as *res judicata* finds no place in such a circumstance. Neither has the *functus officio* theory, which, upon close examination is merely part and parcel of the doctrine of *res judicata*, any role to play in the case."

Additionally the Federal Court held that the "discretion to invoke the inherent jurisdiction should also be exercised in exceptional cases where the defect is of such a serious nature that there is a real need to set aside the defective order to enable the court to do justice".

From what we have said so far can the three interveners intervene in the same proceedings in which the 1993 order was made? We say they can for the following reasons.

Since they have established their interests in the outcome of the originating summons and such interests have not been disputed, the fact that they have not been cited as parties in the proceedings and that the 1993 order was obtained without their knowledge have deprived them of their right to be heard on their interests. This is a breach of the rules of natural justice and following *Eu Finance Berhad's* case *(supra)*, the 1993 order is a nullity and can be successfully attacked in collateral proceedings *ex debito justitiae.*

In this regard, the conduct of the appellant is most relevant and most telling. The originating summons was filed whilst the originating motion before Abdul Aziz Mohamad J was part heard pending decision. Both summonses seek remedies that have the same effect. The originating summons was heard two weeks after it was filed, thereby stealing a march on the originating motion.

We say that the appellant's behaviour is highly questionable and that of their solicitors most unprofessional. Under these circumstances we consider that filing a fresh action to set aside the 1993 order is an exercise in futility as it is counter productive and it will be adding another suit to an already long list of actions relating to the same subject matter. One need only read the judgment of the trial judge to appreciate the numerous suits

and summonses filed by the appellant following their non-acceptance of the winding up order as they contend that they were not the entity affected by the order. But they had not appealed against that order. Instead they filed the originating motion which has since been decided by Abdul Aziz Mohamad, J. Again no appeal had been lodged by the appellant in that originating motion. This later judgment runs contrary to the 1993 order and whilst we appreciate that a court is not bound by a decision of another court exercising concurrent jurisdiction, nonetheless the appellant are now placed in the most anomalous position in that there are two existing and conflicting orders as to their legal status. Since the appellant had not appealed against both orders, the interveners have provided the alternative whereby the appellant's legal status can be finally resolved.

Under these circumstances we consider that the justice of the case entitles the interveners to apply to set aside the 1993 order *ex debito justitiae* in the same proceedings in which the 1993 order was made and further that the High Court was not *functus officio* to hear and determine such application under its inherent jurisdiction and we so hold. For the reasons stated we uphold the decision of the High Court and affirm the orders it made on 7 November 1997. Consequently, we dismiss this appeal with costs and order that the deposit be paid out to the interveners to account of their taxed costs.

In respect of costs, considering that there is a valid winding up order against the appellant, we direct that the costs be borne by JL Selvam personally.